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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13

14 MICHAEL TURCIOS, on
15 behalf of himself and all others
16 similarly situated,

17 Plaintiff,

18 vs.

19 CARMA LABORATORIES,
20 INC., a Wisconsin corporation,

21 Defendant.
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Case No. CV12-8487- JGB(Ex)

**CARMA LABORATORIES INC.'S
OPPOSITION TO PLAINTIFF'S FILING OF
SUPPLEMENTAL AUTHORITY IN
SUPPORT OF MOTION FOR CLASS
CERTIFICATION**

Motion for Cert. Hearing: July 1, 2013
Judge: Hon. Judge Jesus G. Bernal
Location: Courtroom 1

1 Carma Labs opposes Plaintiff Michael Turcios's filing of supplemental authority
2 in support of his motion for class certification.

3 *First*, Plaintiff's "supplemental authority" is untimely, procedurally improper
4 and unnecessary. Plaintiff did not seek discovery regarding Carma Labs' dispute with
5 the District Attorney's office until *after* he filed his motion for class certification,
6 although Plaintiff has been aware of that dispute since long before that motion was
7 filed. Indeed, Plaintiff referenced the District Attorney's dispute in his certification
8 brief. (Mot. at 1:9-10, 24:22-27.) Moreover, it appears that Plaintiff's attorneys were
9 aware of the District Attorney's dispute prior to the filing of the complaint in this
10 action, or have otherwise communicated with the District Attorney regarding that
11 dispute. In response to Carma Labs' Sunshine Act request, the Sacramento County
12 District Attorney's office admitted that it communicated with the Ridout & Lyon firm
13 about its investigation into Carma Labs, although it has shielded those communications
14 from disclosure under the investigative privilege. (See **Ex. A**, April 13, 2013 Letter
15 from Sacramento County District Attorney, attached hereto) ("We have no documents
16 or records concerning the Ridout firm or Mr. Turcios [sic] that do not relate to the
17 investigation of Carma Labs.")¹ Thus, Plaintiff cannot now claim in good faith that
18 he "could not produce [the] document at the time his motion was originally filed"
19 (Mot. at 1:7-9) or otherwise allege that he was unaware of the dispute at the time that
20 motion was filed.

21 *Second*, there is no support for Plaintiff's allegation that the "disputes between
22 Defendant and the District Attorneys for Yolo County and Sacramento County remains
23

24 ¹ Carma Labs also sought discovery from Plaintiff regarding communications with the
25 Sacramento County District Attorney's Office regarding the dispute in January.
26 Plaintiff has denied exchanging "documents" with the District Attorney's office, but
27 has not denied that it has communicated with that office, and claimed work product
28 over any such communications. Curiously, Chris Ridout, Plaintiff's lead attorney, and
Ruth Young, the Deputy District Attorney in Sacramento County leading the Carmex
inquiry, also appear to have attended Pacific McGeorge School of Law together.

1 [sic] ongoing and have still yet to be resolved.” The letter attached as Exhibit A to
 2 Plaintiff’s supplemental filing is dated August 17, 2011—*two years ago*. Tellingly, to
 3 date, the District Attorneys have taken no action against Carma Labs.

4 *Third*, the District Attorney’s dispute (and the status thereof) is simply irrelevant
 5 to Plaintiff’s motion for class certification. The existence (or lack thereof) of a
 6 government dispute cannot cure the myriad problems with Plaintiff’s motion for class
 7 certification. In particular, unlike Mr. Turcios, a district attorney need not prove that a
 8 statutory violation caused any harm; merely that a statutory violation occurred. Mr.
 9 Turcios must prove not only that a statutory violation occurred, but also that he
 10 suffered harm as a result of that violation. As outlined in Defendant’s prior briefing,
 11 Mr. Turcios, a repeat, satisfied Carmex consumer, has not and cannot make the
 12 requisite showing. Indeed, the existence of the District Attorney’s inquiry into Carma
 13 Labs proves only that a class action is not a superior method of adjudicating this
 14 dispute because there is another adequate forum addressing the same issues raised in
 15 Plaintiff’s complaint. *See, e.g., Kamm v. Cal. City Dev. Co.*, 509 F.2d 205, 211-213
 16 (9th Cir. 1975) (upholding district court’s finding that a class action was not superior
 17 where the California Attorney General brought a state court action relating to the same
 18 conduct); *Caro v. Procter & Gamble Co.*, 18 Cal. App. 4th 644, 660-661 (1993).
 19 (denying class certification where a class action would “effectively duplicat[e] work
 20 which has been or could be done by the state.”)

21 For the foregoing reasons, Carma Labs respectfully requests that the Court
 22 disregard Plaintiff’s supplemental authority in support of class certification.

23 Respectfully submitted,

24 K&L GATES LLP

25 Dated: August 14, 2013

26 By: /s/ Rachel R. Davidson
 27 Attorney for Carma Labs